IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 240 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

H.R.VORA

Versus

SHARDA FARSAN MART AND OTHERS

Appearance:

MR BRIJESH TRIVEDI for Mr. KI SHAH for Petitioner

MR A.B MUNSHI for Mr AJ PATEL for Respondent No. 1

MR ST MEHTA APP for Respondent No. 6-State

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/09/2000

ORAL JUDGEMENT

Heard the learned advocates.

This revision under Section 397 read with Sec.

401 CrPC has been preferred against the order of discharge dated 28th February, 1988 made under Section 245 (1) CrPC by the learned Judicial Magistrate, First Class, Surat in Prevention of Food Adulteration Case No. 2 of 1987. The applicant before this Court is the complainant-Food Inspector. It was the case of the complainant that on 17th June, 1986, he had purchased some 1500 grams Sev from the accused no. 1-shop in which the rest of the accused are the partners. The quantity of Sev purchased by the complainant was collected in three equal parts in polyethylene bags and tied with a string. All the three polyethylene bags were placed in a large brown paper bag sealed and signed and sent for analysis. The Public Analyst gave her report on 19th July, 1986. She found that the turmeric power was used in the preparation of Sev as the colouring agent in contravention of Rule 24 of the Prevention of Food Adulteration Rules, 1955. On the basis of this report, complaint was made by the Food Inspector. The learned Magistrate having taken the evidence, as was produced by the Food Inspector under Section 244 CrPC, was of the view that no offence was made out against the accused. The learned Magistrate held that the sample collected by the Food Inspector was not properly sealed in the manner in which it was required to be sealed under Rule 16 of the Rules so as to rule out the possibility of tampering. Rule 16 requires, inter alia, that all samples of food sent for analysis shall be packed, fastened and sealed in the manner provided therein. It requires that each container should be securely fastened so as to prevent leakage of the content in transit; the container shall then be completely wrapped in fairly strong thick paper. The ends of the paper should be neatly folded in and affixed by means of gum or other adhesive. It is undisputed that in the present case, the polyethylene bag was not sealed so as to prevent the leakage. It cannot be gainsaid that provisions contained in Rule 16 are mandatory and non-compliance thereof shall be fatal. In my view, the learned Magistrate has rightly held that no case against the accused had been made out and the accused were rightly discharged under Section 245 (1) CrPC. The impugned order does not warrant interference by this Court. Application is dismissed. Rule is discharged.

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Prakash*